

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re:

CHAPTER 13 ATTORNEY FEE
GUIDELINES.

Administrative Order

Dated: September 28, 2006

**ORDER ADOPTING CHAPTER 13
ATTORNEY FEE GUIDELINES, AS AMENDED OCTOBER 1, 2006**

Pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 2016-1(c), the court hereby adopts the attached Chapter 13 Attorney Fee Guidelines. Unless the court orders otherwise, these guidelines apply in all cases commenced under or converted to Chapter 13 in the District of Hawaii on and after October 1, 2006.



/s/ Robert J. Faris

United States Bankruptcy Judge

Dated: 09/28/2006

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

CHAPTER 13 ATTORNEY FEE GUIDELINES

(amended October 1, 2006)

1. **Scope.** Pursuant to LBR 2016-1(c), the following are guidelines under which the court will, as part of the plan confirmation process, award and allow compensation and reimbursable expenses, and provide for their payment under the plan, to attorneys representing Chapter 13 debtors.

2. **Attorney Options.** An attorney may decline to seek an award, allowance, and payment of compensation and expenses pursuant to these guidelines. If an attorney so declines, the award, allowance, and payment of compensation and expenses are governed by applicable authority including, without limitation, 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, LBR 2016-1, and the Guidelines for Chapter 13 Procedures. This authority requires, at a minimum, that detailed billing records be kept and filed with a fee application and summary sheet.

3. **Expedited Approval of Fees Through Plan Confirmation.** Attorneys may have their fees and expenses awarded and allowed as part of the Chapter 13 plan confirmation process without filing a separate detailed application. The following conditions must be satisfied for such expedited approval.

- (a) The attorney has filed the disclosure of compensation required under 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b);
- (b) The attorney has filed an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Attorneys," a copy of which is attached hereto;
- (c) The amount requested does not exceed the maximum amounts stated in paragraph 5, and
- (d) No objection to the request has been filed.

4. **Reasonable Fees for Normal and Customary Services.** Having considered comments by the Office of the United States Trustee, the Chapter 13 Trustee, and members of the local bar, and reviewed attorney fee applications and attached billing statements on file, the court has determined, in accordance with 11 U.S.C. § 330(a)(4)(B), that the amounts stated in paragraph 5 are presumptively reasonable for normal and customary legal services rendered by an attorney in representing the interests of the debtor in connection with the bankruptcy case. These amounts represent the maximum amount of fees and expenses that may be awarded and allowed through plan confirmation without the filing of a detailed compensation application.

5. **Maximum Fee Amounts.** The maximum amounts which may be awarded and allowed through the procedure described in paragraph 3, including expenses and any general excise tax but not including the fee for filing the petition, shall consist of the following components.

- (a) **Basic Case.** This includes normal and customary legal services and expenses, including without limitation: analyzing the debtor's financial situation; providing all necessary advice, explanations, and counsel to the debtor about the bankruptcy case; preparing and filing the documents required by 11 U.S.C. § 521, the plan and any amendments of these documents; representing the debtor at the meeting(s) of creditors and confirmation hearing(s); providing information on the debtor's income or other matters as requested by the Chapter 13 Trustee; negotiating any unopposed assumption or rejection of leases; responding to objections to confirmation and motions to dismiss; and reviewing and objecting to claims.

Maximum amount: \$2100.

- (b) **Disposable Income Calculation.** This includes the calculation of disposable income by being required to complete all sections of Official Form 22C because the debtor's income is greater than the applicable median income.

Maximum amount: \$200.

- (c) **Tax Claims.** This includes services connected with negotiating or resolving disputes with the taxing authorities, including situations where there are outstanding tax returns or payments, and objections to plan confirmation.

Maximum amount: \$400.

- (d) **Secured Claims.** This includes services involving the avoidance of liens and the valuation of collateral to determine the amounts of secured claims.

Maximum amount: \$100 for motion to avoid lien; \$200 for motion to value collateral; Aggregate limit: \$500.

- (e) **Distressed Real Property.** This includes services related to real property in foreclosure or anticipated to be the subject of foreclosure which the debtor is or will be opposing, requiring the attorney to negotiate or resolve disputes with secured creditors, including matters concerning relief from stay, adequate protection, valuation and extent of a security interest, and objections to plan confirmation.

Maximum amount: \$600.

- (f) **Vehicle Repossession/Garnishment.** This includes services for assisting the debtor in an ongoing repossession of a vehicle or other personal property, or if the debtor is the subject of wage garnishment.

Maximum amount: \$400.

- (g) **Business Reporting.** This includes financial reporting to the trustee and other bankruptcy-related services where the debtor operates a business.

Maximum amount: \$1500.

6. Failure to Satisfy Conditions for Expedited Approval. An attorney who has elected the expedited approval of fees and expenses under these guidelines but who has not satisfied all the conditions stated in paragraph 3 shall not receive any plan distributions, shall not draw on any funds advanced and held in trust for the debtor, and may be required to refund all or a portion of any fees received in connection with the bankruptcy case, pursuant to 11 U.S.C. § 329(b). Unless the conditions of paragraph 3 are satisfied in full prior to confirmation, the attorney must seek approval of attorney fees and expenses by separate application under LBR 2016-1(a) and other applicable authority. The pendency of such an application shall not delay plan confirmation or the commencement of plan payments pursuant to a confirmed plan.

7. Fees for Post-Confirmation Services. If the amount of fees and expenses awarded and allowed in the plan confirmation order is not sufficient to compensate the attorney for the actual legal services rendered in the case after plan confirmation, the attorney may apply for additional amounts by completing and filing an application and notice that substantially conforms to the court-approved form (hib_2016-13a), and attaching detailed billing records. The application for additional fees shall disclose any effect which the allowance of such fees may have on the plan and payments to creditors. The application and notice shall be filed and served on the debtor, the Office of the United States Trustee, the Chapter 13 Trustee, and all creditors. Absent an objection filed within 20 days after the date of such notice, the court may award and allow additional fees and expenses without a hearing.

8. Payment of Fees Through Plan. Except for any attorney fees and expenses paid by the debtor prior to the filing of the petition, all fees shall be paid through the plan unless the court orders otherwise. Postpetition, the attorney may not receive fees directly from the debtor, or from another party on behalf of the debtor, unless paid into a client trust account pending court approval. In the first distribution after the entry of the order confirming a plan and authorizing the payment of attorney fees, the trustee shall pay the attorney 50% of the funds then held by the trustee. Thereafter, the trustee shall disburse monthly to the attorney the lesser of 50% of the monthly plan payment or \$250 per month of each plan payment until the fee is paid in full. For additional fees awarded under paragraph 7, the trustee shall disburse monthly to the attorney the lesser of 50% of the monthly plan payment or \$250 of each plan payment, commencing with the first distribution period after the entry of the order allowing the additional fees and expenses.

9. Payment of Attorney Fees in Dismissed or Converted Case. If an attorney has elected the approval and payment of fees and expenses under these guidelines and the case is dismissed or converted prior to confirmation of a plan, absent a contrary order, and to the extent funds are available, the trustee shall pay to the attorney an administrative claim equal to 65% of the total fee the debtor agreed to pay less any prepetition retainer. The attorney shall not collect or receive additional fees from the debtor or a third party unless authorized by the court.

10. Inherent Authority of Court to Review Fees. On its own motion or the motion of any party in interest, the court may review any fees and expenses paid or requested to be paid.

11. Effective Date. The maximum fee amounts stated in paragraph 5 are effective in all cases filed under or converted to Chapter 13 on and after October 1, 2006.

Attorney or Party Name, Address, Phone, Fax, Email:	For court use only
UNITED STATES BANKRUPTCY COURT DISTRICT OF HAWAII	
Debtor(s):	Case No.: Chapter 13
<u>RIGHTS AND RESPONSIBILITIES OF CHAPTER 13 DEBTORS AND ATTORNEYS</u>	

A debtor in a Chapter 13 bankruptcy case must understand the debtor's rights and responsibilities. The debtor must also know and understand his or her attorney's responsibilities and the importance of communicating with the attorney to make the case successful. In order to assure a mutual understanding of these rights and responsibilities in the bankruptcy process, the debtor and the attorney agree as stated below. Reference to a debtor includes a joint debtor, if any.

BEFORE THE PETITION IS FILED

Debtor agrees to:

1. Discuss with the attorney the debtor's objectives in filing the bankruptcy case.
2. Inform the attorney of any and all prior bankruptcy cases filed by the debtor.
3. Timely provide the attorney with accurate, complete information about the debtor's financial situation, including assets and debts, income and expenses, domestic support obligations such as alimony, child support, and divorce agreements, and the status of tax returns and payments.
4. For the pre-bankruptcy period specified by the attorney, timely provide copies of:
 - a. Pay stubs or other evidence of payment received from an employer;
 - b. All federal tax returns or transcripts of the returns; and
 - c. All bills, notices, statements, or communications from creditors.

Attorney agrees to:

1. Personally meet with the debtor to review the debtor's financial information.
2. Personally counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter 13 case, discuss both procedures with the debtor as well as non-bankruptcy options, and answer the debtor's questions.
3. Personally explain to the debtor the requirement for obtaining budget and credit counseling from an approved agency prior to filing the bankruptcy petition and the need to file a certificate issued by the agency.
4. Personally explain to the debtor the requirement to complete a personal financial management course before a discharge may be granted.
5. Personally explain to the debtor the matters in which the attorney will represent the debtor.

6. Personally review with the debtor and obtain the debtor's signature on the completed petition, schedules, statements, and plan, or Declaration re: Electronic Filing if the documents are filed via ECF. (Clerical or paralegal staff may prepare the documents, but the attorney must perform the review.)
7. Timely prepare and file on the debtor's behalf the completed petition, schedules, statements (including the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income), plan with related motions to value collateral or to avoid liens, and any amendments before or after the petition is filed.
8. Personally advise the debtor that, unless an extension is granted, a failure to file the schedules, statements and plan by certain deadlines may result in dismissal of the bankruptcy case with a 180-day bar to refiling.
9. Personally explain which payments will be made directly by the debtor and which payments will be made through the plan, with particular attention to mortgage and vehicle loan or lease payments, as well as any other claims which accrue interest.
10. Personally explain to the debtor how, when, and where to make the Chapter 13 plan payments, and discuss the availability of a wage order as a means to ensure payments to the Trustee.
11. Personally explain to the debtor that the plan payment must be made to the trustee monthly beginning 30 days after the petition is filed.
12. Personally explain to the debtor how the attorney's fees and the trustee's fees are paid and provide an executed copy of this document to the debtor.
13. Personally advise the debtor of the requirement to attend the § 341 meeting of creditors, and instruct the debtor as to the date, time and place of the meeting and other information which will be sent by the court in the notice of the commencement of the case.
14. Personally advise the debtor of the necessity of maintaining liability, collision and comprehensive insurance on vehicles securing loans or leases, and appropriate insurance if the case involves a business.
15. Personally advise the debtor that failure to file current and delinquent tax returns will prohibit confirmation of a plan, delay the case, and may result in dismissal of the case.
16. Personally advise the debtor of the requirement to provide the Trustee with a copy of each federal tax return, or transcript of the return, for each tax year during the bankruptcy case.
17. Personally advise the debtor that a failure to be current on domestic support obligations will prohibit confirmation of the plan and delay the case.
18. Personally advise the debtor that court approval is required for post-confirmation sales of real or personal property and incurring new debt that exceeds \$1,000.

AFTER THE PETITION IS FILED

Debtor agrees to:

1. Appear punctually at the § 341 meeting of creditors with recent proof of income, a photo identification card, proof of Social Security number, and any financial documentation as requested by the attorney or the Trustee.
2. Timely make the required payments to the Trustee and to any creditors being paid directly.
3. Timely pay any domestic support obligations, such as alimony and child support.
4. Promptly inform the attorney if the debtor loses his or her job or has other financial problems, including missing payments to the Trustee, on a mortgage or other secured debt, or domestic support obligation.
5. Provide the Trustee annually with copies of the most recent federal tax return and updated schedules "I" and "J" for income and expenses, and a statement of monthly income that shows how income, expenditures, and monthly income are calculated.

6. Keep the trustee and the attorney informed of the debtor's current address and telephone number.
7. Inform the attorney of any wage garnishments or attachments of assets which occur or continue after the filing of the case.
8. Inform the attorney if the debtor is sued or wishes to file a lawsuit during the case.
9. Contact the attorney before buying, refinancing, or selling real property and before entering into any long-term loan agreements to find out what approvals are required.
10. Maintain liability, collision and comprehensive insurance on vehicles securing loans or leases, and appropriate insurance if the case involves a business.
11. Complete a personal financial management course from an approved agency prior to making the last payment due under the plan.
12. At the time of the last plan payment, certify that all domestic support obligations have been paid.

Attorney agrees to provide the following legal services:

1. Appear at the § 341 meeting of creditors with the debtor.
2. Prepare, file and serve necessary amended statements and schedules, and notice of any change in the debtor's address, in accordance with information provided by the debtor.
3. Respond to objections to plan confirmation, and where necessary, prepare an amended plan.
4. Prepare, file, and serve necessary modifications to the plan in the best interest of the debtor which may include suspending, lowering, or increasing plan payments or duration.
5. Prepare, file, and serve necessary motions to buy, sell, or refinance real property when appropriate.
6. Object to improper or invalid claims, if necessary, and file a claim on behalf of the debtor when failure to do so will adversely affect the debtor's case or its successful completion and discharge or such failure will adversely affect the debtor after case completion and discharge.
7. Represent the debtor in motions for relief from stay and motions to dismiss.
8. Where appropriate, prepare, file, and serve necessary motions to avoid liens on real or personal property.
9. Prepare and submit the proposed order confirming plan, if not prepared by the trustee.
10. Provide such other legal services as are necessary for the administration of the present case before the bankruptcy court, except that representation or non-representation in an adversary proceeding may be the subject of a separate agreement of the debtor and the attorney.
11. Promptly respond to the debtor's questions and inquiries during the pendency of the case.

ATTORNEY FEES

Fixing the attorney fees for a chapter 13 case is a two step process. First, the attorney and the client must agree upon an amount. Second, the court must decide whether that amount is reasonable.

Normally, in order to obtain the court's approval of attorney fees, the attorney must file a detailed application listing specific work done on specific dates. However, the court will approve chapter 13 attorney fees without a detailed application in order to make routine cases faster and less expensive. The total amount of attorney fees will be approved as part of plan confirmation so long as the amounts being charged are not greater than certain maximum amounts set by the court for particular services. The total amount of fees that will be approved will depend on the number and complexity of the issues in the case. Issues that make a case more difficult and more expensive usually involve an ongoing foreclosure, repossession, or garnishment; delinquent tax returns or payments; alimony, child support, and other domestic obligations that are past due; asking the court to value property that secures a mortgage or loan, and requesting the court to make a lien or security interest void.

For cases filed on and after October 1, 2006, the court has set the following **maximum** amounts for services that an attorney normally performs before a plan is confirmed. These amounts include associated costs.

- ▶ The basic attorney's fee is **\$2100**.
- ▶ If the debtor's income is greater than the applicable median income, which requires the attorney to calculate disposable income by completing all sections of Form 22C, the attorney may charge an additional **\$200**.
- ▶ If the debtor has not filed all required tax returns or there are tax payments past due, the attorney may charge an additional **\$400**.
- ▶ If the debtor wishes to file a motion to avoid a lien on personal property, the attorney may charge an additional **\$100** per motion. If the debtor wishes to file a motion to value personal property collateral, the attorney may charge an additional **\$200** per motion. (The total additional charge, however, for motions to avoid liens on personal property and to value personal property collateral may not exceed **\$500**.)
- ▶ If the debtor owns real property which is involved in a foreclosure or which is likely to be the subject of a dispute, the attorney may charge an additional **\$600**.
- ▶ If the debtor is involved in an ongoing repossession of a vehicle or other personal property, or if the debtor is the subject of a wage garnishment, the attorney may charge an additional **\$400**.
- ▶ If the debtor operates a business, the attorney may charge an additional **\$1500**.

The amounts above are only maximum amounts that the court will approve as part of plan confirmation. In some cases, the above amounts may be more or less than what is needed to fairly compensate the attorney. The attorney and the client may agree to lesser amounts. But if the attorney and the client agree upon higher amounts, the attorney must file a detailed application and obtain the court's approval. The court always has the power to increase or decrease the amount to which the attorney and the client have agreed.

The debtor may pre-pay all or part of the attorney fees before the petition is filed, but the attorney may not accept more than the amounts stated above. The chapter 13 Trustee will pay any fees which the court approves and which the debtor did not pre-pay.

In some cases, the attorney has to do more work than expected after the plan is confirmed. If this occurs, the attorney may ask the court to approve additional fees. If the court approves additional fees, the chapter 13 Trustee ordinarily will pay them, unless the court orders otherwise. After the bankruptcy petition is filed, the attorney may not receive any fees directly from the debtor or from anyone else on the debtor's behalf unless the court gives permission; the attorney may, however, request and receive a retainer from the debtor or another party and deposit it in the attorney's trust account, but the attorney may not draw on the retainer without the court's approval.

Additional information about attorney fees is posted on the court's website, www.hib.uscourts.gov.

Debtor(s) and Attorney agree that this case involves the following issues and fee components:

Basic services (not more than \$2,100)	\$
Form 22C disposable income calculation (not more than \$200)	\$
Delinquent tax returns or payments (not more than \$400)	\$
Avoidance of lien(s) (not more than \$100/motion)	\$
Valuation of collateral (not more than \$200/motion)	\$
Real property foreclosure or dispute (not more than \$600)	\$
Repossession or garnishment (not more than \$400)	\$
Business operation (not more than \$1500)	\$
Total of fee components being charged in this case:	\$
Amount debtor paid before the petition was filed:	\$
Balance of attorney fees and costs to be paid through the plan:	\$

/s/ _____
Attorney for Debtor(s)

/s/ _____
Debtor

/s/ _____
Joint Debtor (if any)

Dated: _____

Dated: _____

Dated: _____